

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

IN RE: PHENYLPROPANOLAMINE
(PPA) PRODUCTS LIABILITY
LITIGATION,

MDL NO. 1407

ORDER GRANTING DEFEN-
DANTS' MOTION FOR SUMMARY
JUDGMENT

This document relates to:

Grover v. Bayer, C03-388

Defendants Block Drug Company, Inc. and Bayer Corporation have filed a motion for summary judgment based on this court's June 18, 2003 *Daubert* ruling. Defendant asserts that the plaintiff Frank Grover will be unable to establish that he suffered a stroke or that he ingested a PPA-containing product manufactured by defendants within 72 hours of his alleged injury, both essential elements of his claims. See June 18, 2003 Order Granting in Part and Denying in Part MDL Defendants' Motion to Preclude Plaintiffs' Expert Opinions as to General Causation; May 5, 2004 Order Granting in Part and Denying in Part Defendants' Motion for Summary Judgment.

Defendants have submitted a good volume of evidence supporting their position. In particular, defendants submit deposition testimony of plaintiff's treating physician, who averred that

1 tests showed that plaintiff did not suffer a stroke, but a
2 "vertebro-basilar migraine." See Dep. of Dr. Johnson Haynes, Jr.,
3 58:21-59:7, Exh. E to Defs.' Motion for Summary Judgment. Defen-
4 dants also submit evidence, including plaintiff's own testimony,
5 demonstrating that plaintiff did not ingest any Bayer or Block
6 PPA-containing product within 72 hours of the above-outlined
7 injury.

8 Prior orders of this court have established that a plaintiff
9 must prove ingestion of PPA within 72 hours of a medically
10 documented stroke. Plaintiff, who is proceeding *pro se*, did not
11 respond to this motion. He did, however, file a letter with the
12 court several days before the motion was filed, expressing his
13 desire to move forward with his claims and asking the court for a
14 trial date.

15 While the court is not unsympathetic to the difficulties of
16 proceeding *pro se*, the court also recognizes that the law re-
17 quires all plaintiffs - represented or not - to establish certain
18 facts before they are entitled to recovery. At the summary
19 judgment stage, averments unsupported by documentation are
20 insufficient. In this case, plaintiff has failed to demonstrate a
21 genuine issue of material fact as to certain elements of his
22 claims, forfeiting a right to recover thereon.

23 For the foregoing reasons, defendants' motion for summary
24 judgment is GRANTED and this case is hereby DISMISSED.

25 DATED at Seattle, Washington this 10th day of January, 2006.

Barbara J. Rothstein

UNITED STATES DISTRICT JUDGE

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